

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X  
BOROUGH OF UPPER SADDLE RIVER,

Plaintiff,

v.

VILLAGE OF AIRMONT, ROCKLAND COUNTY  
SEWER DISTRICT #1,

Defendants.  
-----X

COMPLAINT

JURY DEMAND

07 CIV. 0109

wf4

FILED  
U.S. DISTRICT COURT  
2007 JAN - 5 P 4: 31  
S.D. OF N.Y.

Plaintiff Borough of Upper Saddle River, by its attorneys Burke, Miele & Golden,  
LLP, alleges for its complaint herein as follows:

**STATEMENT OF THE CASE**

1. This action is a citizens' suit brought under the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1376 (hereinafter "Clean Water Act"), seeking relief from Defendants' violations of the Clean Water Act.
2. Plaintiff seeks injunctive relief, declaratory relief, civil penalties, and costs including attorney's fees.

**JURISDICTION**

3. This Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 33 U.S.C. § 1365 (a)(1) and federal question jurisdiction, 28 U.S.C. § 1331.

4. On October 6, 2006, Plaintiff gave notice of the violations and its intent to file suit against defendants to the Administrator of the United States Environmental Protection Agency (“EPA”), to the Commissioner of the New York State Department of Environmental Conservation (“DEC”), and to the defendants, pursuant to 33 U.S.C. § 1365 (b)(1)(A) of the Clean Water Act. (attached hereto)

5. More than 60 days have passed since the above-referenced notice was served upon defendants and the governmental parties named above, thus satisfying section 505(b)(1)(A) of the Clean Water Act, 33 U.S.C. 1365 (b)(1)(A).

6. Neither the EPA nor the DEC has commenced and diligently prosecuted a court action to redress the violations under section 505(b)(1)(B) of the Clean Water Act, 33 U.S.C. § 1365 (b)(1)(B).

#### **VENUE**

7. Venue is appropriate in the Southern District of New York pursuant to Section 505 (c)(1) of the Clean Water Act, 33 U.S.C. § 1365(c)(1) because the source of the violations is located within this District.

#### **PARTIES**

8. The Borough of Upper Saddle River (hereinafter “USR”) the border of which abuts the Village of Airmont is a municipality under the laws of the State of New Jersey.

9. Plaintiff is a “citizen” within the meaning of the citizen suit provisions of section 505(a) of the Clean Water Act, 33 U.S.C. § 1365 (a).

10. Defendant Village of Airmont is a political subdivision of the State of New York, duly incorporated under the laws of the State of New York, and is a

“municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4), and a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

11. Defendant Rockland County Sewer District No. 1 (“RCSD #1”) is a county agency responsible for properly operating and maintaining interceptors and pumping stations in the system and all sewers within its boundaries, and is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

12. The quality of the Saddle River which flows through the Village of Airmont and the Borough of Upper Saddle River and its surrounding areas directly affects the health, recreational, aesthetic, commercial, and environmental interests of USR’s residents. The interests of USR’s residents are being, and will be, adversely affected by Defendants’ failure to comply with the requirements of the Clean Water Act.

13. Defendants are “persons” within the meaning of the citizen suit provisions of the Section 505 (a)(1) of the Clean Water Act, 33 U.S.C. § 1365 (a)(1).

### **GENERAL ALLEGATIONS**

14. Congress enacted the Clean Water Act in 1972 for the purpose of “restor[ing] and maintain[ing] the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. §1251. One of the specific goals of the Act was “that the discharge of pollutants into the navigable waters be eliminated by 1985.” *Id.*

15. The Clean Water Act prohibits the discharge of pollutants from a point source to the waters of the United States, except pursuant to, and in compliance with, a National Pollutant Discharge Elimination System (“NPDES”) permit. 33 U.S.C. §1311(a); 33 U.S.C. §1342. The State of New York is authorized to issue State Pollutant Discharge

Elimination System (“SPDES”) permits in lieu of the NPEDES permits pursuant to Clean Water Act § 492. 33 U.S.C. §1342.

16. The Clean Water Act defines “pollutant” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

17. The Clean Water Act defines “point source” as “any discernable, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

18. Pipes are point sources within the meaning of section 502 of the Clean Water Act, 33 U.S.C. § 1362(14).

19. “Waters of the United States” within the meaning of the Clean Water Act include any navigable waters or waters that are tributaries to navigable waters. 33 U.S.C. § 1362(7).

20. The Saddle River, its tributaries, and adjacent associate wetland are waters of the United States within the meaning of the Clean Water Act.

**FIRST CLAIM FOR RELIEF: VIOLATIONS OF THE  
CLEAN WATER ACT BY SPECIFIC ILLEGAL  
DISCHARGES TO WATERS OF THE UNITED STATES**

21. The wastewater collection and treatment system owned and operated by the Village of Airmont and RCSD #1 is a “treatment works” as that term is defined in Section 212(2)(A) and (B) of the Act, 33 U.S.C. § 1292(2)(A) and (B), and a “publicly owned treatment works” as that term is defined by 40 C.F.R. §122.2 and 40 C.F.R. 403.3(q).

22. The state Department of Environmental Conservation administers the State Pollution Discharge Elimination System permit program, which issued a SPDES Permit to Defendant RCSD #1, under the authority of Section 402 of the Act, 33 U.S.C. § 1342.

23. The Saddle River, to which pollutants have been discharged is a “navigable water” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

24. Defendants discharge water pollution into the Saddle River, and its tributaries in the form of raw sewage, which includes but is not limited to, biological material and other organic matter exerting chemical and biological oxygen demand in the waters, fecal coliform bacteria; nutrients, including nitrogen and phosphorous; settleable, suspended and dissolved solids, including toilet paper and sewerage solids; salts; metals solid waste; pathogens; disinfectants (such as permanganate); and feminine products.

25. Unpermitted discharges from the Defendants have resulted in the presence of

distinctly visible floating or settleable solids in the waters, as well as, suspended solids, deposits of sludge and silt, bad odors, materials harmful to aquatic life, distinctly visible color, and other conditions that alter the integrity of such waters.

26. Unpermitted discharges of wastewater to the navigable waters, of raw sewage, have occurred on numerous occasions and include, but are not limited to:

- a. August 23, 2006
- b. August 24, 2006
- c. August 25, 2006
- d. August 26, 2006
- e. August 27, 2006
- f. August 28, 2006
- g. August 29, 2006
- h. August 30, 2006
- i. September 1, 2006
- j. September 2, 2006
- k. September 3, 2006
- l. October 31, 2006
- m. November 6, 2006
- n. November 8, 2006
- o. And upon information and belief additional unreported spills from at least  
September 3, 2006 to present

27. Organisms in untreated wastewater containing raw sewage can cause a number of diseases in users of contaminated areas. These diseases include, but are not

limited to, enteric diseases such as gastroenteritis, dysentery, and cholera. All of these diseases are highly communicable.

28. The Village of Airmont and Rockland County Sewer District #1 have discharged, and upon information and belief, continue to discharge, pollutants from manhole(s) at or adjacent to Cherry Lane, South Monsey Road and other areas in the Village of Airmont and Rockland County Sewer District #1 into navigable waters without the authorization of a SPDES permit.

29. The unpermitted discharges include, without limitation, the unpermitted discharges identified in Paragraph 22 and 23(a) through (k).

30. Unless enjoined by the Court, the Village of Airmont and RCSD #1 will continue to discharge pollutants to navigable waters in violation of its SPDES permit and Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342.

31. Each day of each unpermitted discharge of pollutants is a separate violation of Section 301 of the Act, 33 U.S.C. § 1311.

#### **CONTINUING VIOLATIONS**

32. As of the date of the filing of this complaint, all of the violations Complained of in the October 6 2006 notice letter are continuing or are reasonably likely to continue.

#### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this court grant the following relief:

- A. A judgment declaring that the Defendants have violated the Clean Water Act.
- B. A permanent injunction directing Defendants to take all steps necessary to come into permanent, consistent compliance with the Clean Water Act, the regulations promulgated thereunder, and its SPDES permit
- C. Award civil penalties against Defendants
- D. Award Plaintiff their costs, including reasonable attorney, witness and consultant fees, as authorized by Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365 (d); and
- E. Award other such relief as this Court deems appropriate.

Dated: January 5, 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael K. Burke", is written over a horizontal line.

Michael K. Burke (MKB 7554)  
Burke, Miele & Golden, LLP  
100 Washington Street, P.O. Box 397  
Suffern, New York 10901  
(845) 357-7500



**BURKE, MIELE & GOLDEN, LLP**

30 MATTHEWS STREET  
SUITE 303A  
POST OFFICE BOX 216  
GOSHEN, N.Y. 10924  
(845) 294-4080  
FAX (845) 294-7673

PATRICK T. BURKE  
ROBERT M. MIELE \*  
RICHARD B. GOLDEN  
MICHAEL K. BURKE

ROCKLAND COUNTY OFFICE:  
100 WASHINGTON AVENUE  
POST OFFICE BOX 397  
SUFFERN, N.Y. 10901  
(845) 357-7500  
(845) 357-7321 (FAX)

PHYLLIS A. INGRAM \*\*  
DENNIS J. MAHONEY, III  
F. MICHELE COOPER

REPLY TO: ☐ ORANGE CO.  
☐ ROCKLAND CO.

JOSEPH P. MCGLINN (1941-2000)

Respond to Post Office Box

\* ADMITTED IN NEW YORK & NEW JERSEY  
\*\* ADMITTED IN NEW YORK & CONNECTICUT

October 6, 2006

Village of Airmont  
Board of Trustees  
P.O. Box 578  
321 Route 59  
Airmont, New York 10982

Rockland County Sewer District No. 1  
4 Route 340  
Orangeburg, New York 10962  
Attn: Julius Graifman, Chairman

Stephen L. Johnson, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

New York Dept. of Environ. Conservation  
Division of Water  
Sandra L. Allen, Director  
625 Broadway  
Albany, New York 12233

New Jersey Department of Environmental Protection  
Division of Water Quality  
401 East State St.  
P.O. Box 029  
Trenton, New Jersey 08625

Re: Notice to Sue for Unpermitted Illegal Discharges under Clean Water Act

Greetings:

We represent the Borough of Upper Saddle River, New Jersey. This letter is to advise you that we are authorized to provide you with this Notice of Intent to Sue the Village of Airmont, New York, and the Rockland County Sewer District No. 1, ("RCSD #1") on behalf of Upper Saddle River, New Jersey, and other potential citizen plaintiffs within the Village of Airmont and Upper Saddle River, for unpermitted, illegal, and continuous discharges by the Village of Airmont and Rockland County Sewer District No. 1 into the Saddle River, a federally protected waterway. This Notice is sent pursuant to 33 U.S.C. § 1365.

We hereby place you on notice, pursuant to §§ 505(a) and (b) of the Clean Water Act, ("CWA") 33 U.S.C. §§1365(a) and (b), that we intend to sue the Village of Airmont and the RCSD #1 for violating, and continuing to violate, effluent standards and limitations as defined by § 505(f) of the CWA, 33 U.S.C. § 1365(f), by discharging pollutants into waters of the United States without a permit as is required under CWA §301(a), 33 U.S.C. §1311(a).

The CWA prohibits the discharge of pollutants from a point source to the waters of the United States except pursuant to and in compliance with a permit.<sup>1</sup> *See*, 33 U.S.C. § 1311(a); 33 U.S.C. § 1342. The Act defines "pollutant" to include solid waste, biological materials, and sewerage. 33 U.S.C. § 1362(6). "Point source" is defined as "any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure...from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

We believe that the raw sewerage discharged by the Village and RCSD #1 from the locations attached contains the following pollutants: biological material and other organic matter exerting chemical and biological oxygen demand in the waters; fecal coliform bacteria; nutrients, including nitrogen and phosphorous; settleable, suspended and dissolved solids, including toilet paper and sewerage solids; salts; metals; solid waste; pathogens; disinfectants (such as permanganate); feminine products; and other materials. These discharges have resulted in the presence in the waters of distinctly visible floating or settleable solids, suspended solids, deposits of sludge and silt, bad odors, materials harmful to aquatic life, distinctly visible color, and other conditions that alter the integrity of such waters.

One of the following sites that are discharging pollutants from point sources into the waters of the United State without SPDES permits:

Raw sewerage discharges from a manhole at or adjacent to 64 Cherry Lane on dates including but not limited to:

August 23, 2006	August 29, 2006
August 24, 2006	August 30, 2006
August 25, 2006	September 1, 2006
August 26, 2006	September 2, 2006
August 27, 2006	September 3, 2006
August 28, 2006	

<sup>1</sup> The State of New York is the delegated authority by the Environmental Protection Agency to administer the National Pollution Discharge Elimination System ("NPDES") permit program pursuant to 33 U.S.C. section 1342(b).1370. The state Department of Environmental Conservation administers the State Pollution Discharge Elimination System ("SPDES") permit program to carry out the functional equivalent of SPDES responsibilities.

The RCSD #1 operates a sewerage under a SPDES permit. Upon information and belief, the discharges described herein are not covered or are in violation of this or any other permit.

Our investigations have revealed that at a minimum 2.5 million gallons raw sewerage discharged and flowed into the Saddle River. During both wet and dry weather, raw sewerage has been discharged illegally on a regular basis. No SPDES permit exists allowing for this discharge.


Unless the discharges are addressed and corrected, these discharges will continue in the future. These discharges and the RCSD #1 failure to obtain new permits or modify the existing SPDES permit constitute ongoing violations of the CWA. Each day of unpermitted discharges comprises a series of separate violation of the CWA, with a discrete violation for each pollutant illegally discharged from each point source. As provided by 33 U.S.C. § 1319(d) and 40 C.F.R. §19.4 violators are subject to a civil penalty not to exceed \$27, 500 (or \$31,500 for violations occurring after August 19, 2002) for each such violation. At the close of the 60 day notice period, we intend to file a citizen suit under §505(a) of the Clean Water Act against the Village and RCSD #1 as owner and operator of the above-referenced point sources to seek injunctive relief from and penalties for the violations discussed herein. This notice of intent to sue covers all CWA violations during the proceeding five (5) years preceeding the date of this letter, and all future violations arising from the above referenced point source or points sources in the vicinity.

The May 10, 2006 Consent Order, purporting to address such problems, is wholly ineffective. It does not adequately provide a remedy for the continuing discharges that are occurring in the Village of Airmont and flowing into the Saddle River.

Enclosed please find evidence of prior illegal discharges without permit which are continuing unabated, and which are destined to increase if additional new development in the Village of Airmont is allowed to be connected to the Rockland County Sewer District No. 1. At a minimum, such additional new connections cannot be allowed to occur until all necessary curative measures have been accomplished to prevent such unpermitted and illegal discharges. We are authorized to file suit in the Southern District of New York federal court at the end of the statutorily required notice period.

Please feel free to have your attorney contact me regarding any questions in this regard.

Very truly yours

  
RICHARD B. GOLDEN

Cc: NYSDEC Region 3  
21 South Putt Corners  
New Paltz, New York 12561 (w/ enc.)

NYSDEC Region 3  
200 White Plains Rd, 5<sup>th</sup> Floor

Tarrytown, New York 10591 (w/ enc.)

Hon. Kenneth A. Gabbert, Mayor  
Borough of Upper Saddle River  
376 West Saddle River Rd.  
Upper Saddle River, New Jersey 07458

Robert T. Regan, Esq.  
P.O. Box 214  
345 Kinderkamack Rd.  
Westwood, New Jersey 07675



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## Spill Record

### Administrative Information

**DEC Region:** 3

**Spill Number:** 0606130

### Spill Date/Time

**Spill Date:** 08/28/2006 **Spill Time:** 12:00 PM

**Call Received Date:** 08/28/2006 **Call Received Time:**  
03:00 PM

### Location

**Spill Name:** WOODED AREA

**Address:** 64 CHERRY LANE

**City:** AIRMONT **County:** Rockland

### Spill Description

**Material Spilled:**

RAW SEWAGE

**Amount Spilled:**

Gal.

**Cause:** Vandalism

**Source:** Institutional, Educational, Gov., Other  
**Resource Affected:** Surface Water  
**Waterbody:** CREEK

## Record Close

**Date Spill Closed:** Not closed

If you have questions about this reported incident, please contact the Regional Office where the incident occurred.

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## Other Links of Interest

Information about the Spill Response and Remediation Program  
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**New York State DEC Spill File, List of actions & Resident Records  
Rockland County Sewer District No. 1**

DEC Spill Incident Database 6/1 to 8/15/2006

Spill No.	Spill Date	File Detail Memo	Description of event	Principal Reason	Est. Spill Gallons	Receiving Watercourse
602398	6/2/2006		MH 22 Adams Drive Stony Point	?	?	Sewer - ?
602718	6/10/2006		Washington Ave & Jackson Ave New Square	Equipment Failure	4000	
602760	6/11/2006		Shoulder of Road Route 306 Spring Valley	Human error	500	Soil
603418	6/28/2006		Nyack Pump Station Spear Street	Other	?	Soil
604449	7/19/2006		Sewer MH Suffern Lane, Haverstraw	Equipment Failure	800	Sewer - ?
604511	7/21/2006		Sewer MH Suffron Lane/Madison Ave, Haverstraw	Other	200	Minisceongo
604681	7/25/2006		Washington Ave & Jackson Ave Ramapo	Other	1000	
605304	8/5/2006		Easement South Pascack Rd, Ramapo	Other	500	



<http://www.dec.state.ny.us/cdm/extapps/darfol/spills/results.cfm>

Spill number	Date spill reported	Spill name	County	City/town	Address
1. <u>0605604</u>	08/14/2006	BARBA RESIDENCE	Rockland	PALASADES	35 HIGHLAND AVE
2. <u>0605664</u>	08/15/2006	JOE NERETICH TIRE CORP.	Rockland	SPRING VALLEY	93 UNION RD.
3. <u>0605665</u>	08/15/2006	STONY BROOK RIVER	Rockland	SLOATSBURG	SEVEN LAKES DR./WASH. AVE
4. <u>0605683</u>	08/16/2006	ORANGE & ROCKLAND CENTER	Rockland	SPRING VALLEY	390 WEST ROUTE 59
5. <u>0605705</u>	08/16/2006	GETTY 174	Rockland	STONE POINT	44 LIBERTY DRIVE SOUTH
6. <u>0605706</u>	08/16/2006	GETTY 101	Rockland	VALLEY COTTAGE	221 ROUTE 303
7. <u>0605707</u>	08/16/2006	GETTY 322	Rockland	VALLEY COTTAGE	34 ROUTE 303
8. <u>0605762</u>	08/18/2006	ERICH RESIDENCE	Rockland	NYACK	21 HAVEN COURT
9. <u>0605765</u>	08/18/2006	OFF THE ROADWAY	Rockland	SUFFREN	25 OLD MILL ROAD
10. <u>0605834</u>	08/21/2006	ROADWAY	Rockland	ORANGEBURGH	MOUNTAIN AVE/WESTERN

<http://www.dec.state.ny.us/cdm/extapps/darfol/spills/results.cfm>

Results Found: 15

15 results found

Spill number	Date spill reported	Spill name	County	City/town	Address
11. <u>0605864</u>	08/21/2006	NEXT TO RIVER	Rockland	STONY POINT	RIVER ROAD AND 5TH AVE
12. <u>0605895</u>	08/22/2006	EXXON MOBILE	Rockland	MANUET	275 RT 59 EAST
13. <u>0606004</u>	08/24/2006	ROCKLAND CTY WASTE	Rockland	HILLBURN	50 BALER BLVD
14. <u>0606012</u>	08/24/2006	MIRANT	Rockland	TOMPKINS COVE	37 ELM STREET
15. <u>0606036</u>	08/25/2006	ON ROADWAY	Rockland	NYACK	6TH AVE/NORTH BROADWAY